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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,725

05/20/2005

Gabor Felber

81,617

7806

29089

7590

01/27/2009

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EXAMINER

COONEY, JOHN M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/535,725	<b>Applicant(s)</b> FELBER ET AL.	
	<b>Examiner</b> John Cooney	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 16-29 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 16-18 and 20-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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Applicant's arguments filed 10-2-08 have been fully considered but they are not persuasive.

Newly submitted claim 19 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 19 is directed towards a testing method that is an independent and distinct invention having a different design, mode of operation, and effect from the currently claimed processes for making foams.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 19 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-6, 16-18, and 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkelaar et al.(5,668,191) in view of Humbert et al.(6,458,860) {both previously cited}.

Kinkelaar et al. discloses preparations of polyurethane foams formed by mixing and reacting (1.) polyols having calculated molecular weights meeting those claimed and degrees of unsaturation as claimed, (2.) isocyanates as claimed, (3.) blowing agents as claimed in amounts corresponding to those claimed, and (4.) catalysts (see the entire document).

Kinkelaar et al. differs from applicants' claims in that reactive catalyst as claimed are not required. However, Humbert et al. discloses reactive catalysts, including blends meeting those identified by applicants' new claim 28, to be used as catalyst systems in preparing polyurethane foams for purposes of achieving reduced release of volatiles from formed products and consequently lower fogging resulting from the formed products (see column 1 line 11-column 4 line 43 and the examples, including example 3, as well as, the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the amine catalysts of Humbert et al. as the amine catalyst in the preparations of Kinkelaar et al. for the purpose of providing reduced fogging and volatile release in products formed in order to arrive at the processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

The teachings of the combined prior art adequately provide for variations in amounts of catalyst such that variations in amounts within their teachings for the purpose of modulating their effects would have been within the skill of the ordinary practitioner in the art. Additionally, it has long been held that where the general conditions of the claims are disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Reese* 129 USPQ 402 . Further, a prima facie case of obviousness has been held to exist where the proportions of a reference are close enough to those of the claims to lead to an expectation of the same properties. *Titanium Metals v Banner* 227 USPQ 773. **(see also MPEP 2144.05 I)** Similarly, it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

As to any difference which may be evident based on the ranges of density values of applicants' claims. It is held that both Kinkelaar et al. and Humbert et al. disclose variability in the amount of blowing agent for purposes of forming the articles of their inventions, and it would have been obvious for one having ordinary skill in the art to have varied the amount of blowing agent from within the combined teachings of Kinkelaar et al. and Humbert et al. for the purpose of achieving articles of varied density in order to arrive at the processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. Further, here also, it has long been held that where the general conditions of the claims are disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in

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the art. *In re Aller*, 105 USPQ 233; *In re Reese* 129 USPQ 402 . Further, a prima facie case of obviousness has been held to exist where the proportions of a reference are close enough to those of the claims to lead to an expectation of the same properties. *Titanium Metals v Banner* 227 USPQ 773. **(see also MPEP 2144.05 I)** Similarly, it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272,205 USPQ 215 (CCPA 1980).

Further, regarding the emission and compression values of applicants' claims, it is held that any differences in the material features of applicants' claims are addressed above and these qualitative features are seen to be features associated with the compositions and materials used in the making of the compositions of the instant concern, and difference based on these properties is not seen to be evident without difference being identified in particular material features of the claims.

Applicant's arguments with respect to claims 1-6, 16-18, and 20-29 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Cooney/

Primary Examiner, Art Unit 1796

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